LOH SOON THIAM v. OTHMAN BIN WAHAB

[O.C.J. (Gunn Chit Tuan J.) June 22, July 4 and September 13, 1977]

[Penang — Civil Suit No. 31 of 1975]

Damages — Liability admitted — Issue on quantum only — Multiple injuries — Serious injury to bladder and spinal nervous system — Injuries to radius, ulna, femur, and impairment of sexual performance — General damages assessed at $32,000.

The plaintiff, aged 23 years was single and worked as an attendant in a Municipal Council at the time of the traffic accident. He suffered the following injuries:—

(1) Gross swelling of the left wrist with a comminuted fracture of the lower end of the left radius and ulna;
(2) dislocation of the left hip;
(3) 8 cm. sutured laceration over the left knee with a crack supracondylar fracture of the left femur;
(4) Compression fracture of the body of the first lumbar vertebrae.

He suffered bladder incontinence and impairment of sexual performance. The court had only to determine the quantum of damages as the defendant admitted liability.

Held: the plaintiff should be awarded general damages for loss of amenities, pain and suffering at $32,000 and special damages at $1,050.35.

Cases referred to:-

(1) *Ghulam Hussain* v. *Shaharom & Anor.* [1966] 2 M.L.J. 207.
(2) *Tey Siew Goh* v. *Tay Tian Soo* [1965] 1 M.L.J. 21, 24.
(3) *Lim Cheng Shiew* v. *State Advocate-General* [1965] 2 M.L.J. xxvii.
(4) *Liow Sang* v. *Chai Choo Kim & Anor.* [1962] M.L.J. 429.

CIVIL SUIT.

V. Muthusamy for the plaintiff.

S. Venugopal for the defendant.

Cur. Adv. Vult.

Gunn Chit Tuan J.: This is a claim for special and general damages suffered by the plaintiff in a traffic accident which occurred on the 12th day of June, 1974, near the 9th milestone, Jalan Kulim, Bukit Mertajam, Province Wellesley.

Liability for the accident was admitted by the defendant and only the quantum of damages to be awarded was in issue.

As a result of the accident, the plaintiff was admitted to the General Hospital, Penang, on the same day and the Medical Officer there found the following injuries on him:—

1. Gross swelling of the left wrist with a comminuted fracture of the lower end of the left radius and ulna.
2. Dislocation of the left hip.
3. 8 cm. sutured laceration over the left knee with a crack supracondylar fracture of the left femur.
4. Compression fracture of the body of the 1st lumbar vertebrae.

He also developed symptoms of bladder incontinence and was initially put on a catheter and subsequently taught to do bladder compression.

On July 17, 1974, the plaintiff was transferred to the Bukit Mertajam Hospital where Dr. S. Shanmugam, a Medical Officer (PW1) also found that he had bladder incontinence, limited movements of his left wrist and an unstable gait. He was given physiotherapy in the hospital ward and was only discharged on September 4, 1974, but had to go to the General Hospital, Penang, for further physiotherapic treatment. He was finally allowed to go back to work on November 7, 1974, but was advised to undertake light duties only until December 11, 1974.

Dr. Shanmugam was asked to examine the plaintiff again on February 12, 1976. He found that the plaintiff's penis was capable of erection and ejaculation after a long period of stimulation by masturbation. But the erection was not very strong and the penis was incapable of prolonged erection so that his sexual performance might be affected. According to that doctor, the plaintiff's life expectancy should be normal as long as he took good care of his urinary tract system by regular follow-up and periodic checks. This doctor also said that he agreed with his consultant physician, under whom he worked, that the plaintiff's disability was 40%.

Dr. Shanmugam, who is the holder of a M.B.B.S. degree, was cross-examined at length by defence counsel and said that although he was not a specialist and had not taken a course in urology, yet he had been taught urology and neurology during his medical course. During his service at the Bukit Mertajam Hospital, he was under the supervision of a specialist whose advice he had sought. The doctor then confirmed that the bladder incontinence suffered by the plaintiff was due to a spinal shock to the vertebrae, and disagreed with the suggestion of defence counsel that it was due to psychological factors. He also said that the plaintiff was likely to get urinary infection because of stagnation of urine and subsequently such infection might lead to more serious problems such as inflammation of the bladder.

After listening to the evidence of Dr. Shanmugam in examination-in-chief, cross-examination and re-examination and after perusing the medical reports on the plaintiff at pages 6, 7 and 8 of the agreed bundle of documents (Exhibit "A"), I had no doubt and found on the balance of probabilities that the plaintiff had suffered the injuries set out above as a result of the said traffic accident. Although Dr. Shanmugam did not examine the plaintiff before the said accident, there could be no doubt that the injuries suffered by the plaintiff and his resultant disability were due to the accident in question. As pointed out by defence counsel himself, the most serious injury was the compression fracture of the body of the first lumbar verterbrae. It cannot be seriously disputed and I accepted the evidence of Dr. Shanmugam and found that the shock and injury to the plaintiff's vertebral column at the level of lumbar vertebrae No. 1 had caused disruption to the nerve supply to the plaintiff's bladder resulting in the impairment of the proper functioning of that organ.

Although the doctor could not say whether there was severance of the nerves and had stated in examination-in-chief that the long-term effects of the injury

to the bladder could not be predicted as the plaintiff might recover spontaneously, yet the plaintiff himself was not challenged in cross-examination when he told the court on June 22, 1977 that he still felt weak and could not hold his urine. He could not exert his left wrist and still found difficulty regarding erection of his penis. At the time of the accident, the plaintiff was about 23 years old and was single. He was employed as an attendant in the Municipal Council, Seberang Prai.

As regards special damages, the plaintiff's claim concerning hospital fees, purchase of crutches, transport expenses incurred by him in going to the Bukit Mertajam Hospital for reviews were conceded in full by defence counsel. He also conceded a sum of $31.00 for the items relating to the plaintiff's transport expenses incurred in going to the Penang General Hospital for reviews and for physiotherapic treatment. The plaintiff's claim for $485.70 for repairs to his motorcycle was disputed, but I was satisfied, after hearing the evidence of the Assistant Manager of Boon Siew Sdn. Bhd. (PW2), that the said sum had in fact been paid for repairs to the plaintiff's motor-cycle (see Exhibit P2). I agreed with defence counsel that the transport expenses of the plaintiff's father and elder sister were not reasonably necessary in the circumstances of this case. The two items relating to them were therefore disallowed by me. The result was that a sum of $1,050.35 was ordered by me to be paid by the defendant to the plaintiff as special damages.

On the question of general damages, defence counsel informed the court that there was no reported case in this country on awards made for injury to the bladder. Counsel for defendant then referred to the case of *Ghulam Hussain* v. *Shaharom & Anor.*[1] where $35,000 was awarded by the High Court, Kuala Lumpur in 1966 for loss of amenities, pain and suffering. The plaintiff, who suffered a complicated facture of his pelvis, with rupture of urethra, was also found to be likely to remain impotent and sterile. Counsel for defendant also referred to the following passage of Gill J. (as he then was) in the case of *Tey Siew Goh* v. *Tay Tian Soo*[2] where His Lordship said: —

"Considering the injuries and their effects as stated by the two medical experts, and taking into account the normal pain and suffering which the plaintiff would have undergone and loss of amenities, I would assess general damages at $8,000. In making that assessment I am not taking into account the possible future effects of the injuries, because they appear to me to be purely hypothetical."

In that case, the learned judge decided not to take into account any hypothetical lowering of the plaintiff's intelligence or mental capacity by reason of her head injury. With the greatest respect, I agree that in making an assessment of damages to be awarded, the court should not take into account the possible future effects of any injury. But in this case, apart from the possibility that the plaintiff might recover spontaneously, the court should, in making an assessment now, consider and take into account the actual effects of the plaintiff's injuries currently suffered by him. Thereafter the court could scale down the award, as I have done in this case, if it considered that there was the possibility that the plaintiff might recover from the present effects of the injuries suffered by him. In this case, the court had to consider that as a result of the shock and injury caused to the vertebral column at lumbar vertebrae No. 1, the plaintiff has been and still is suffering from bladder incontinence. Looking at the injury as it was and still is, but without taking into consideration the possibility that his urinary system could be infected later on resulting in more serious problems such as inflammation of the bladder, one finds that there was a serious injury to the plaintiff's nervous system, from which he has not recovered, and the functioning of his bladder, which is an important organ, has been already and still is impaired in its performance. Taking into account that very serious injury to the spinal nervous system and bladder as well as the other injuries to the plaintiffs's radius, ulna and femur as well as the impairment of his sexual performances, I had in mind that a figure of $42,000 would not be too high and would be a reasonable sum of damages to award. But I, as stated above, also considered that the court should take into consideration the possibility that his nervous system and therefore the bladder incontinence might recover, and decided that the said figure should therefore be scaled down.

Counsel for plaintiff did refer the court to the Singapore case of *Lim Cheng Siew* v. *State Advocate-General,*[3] where a 62-year old gardener suffered fractured dislocation of his spine, thoracic 11 and 12 vertebrae, with complete paralysis of his lower limbs and bladder. His spleen was removed after an operation. There was constant smell of urine and he had no control over his bladder or bowels and required permanent assistance as he was unable to move himself even in bed. General damages amounting to $55,000 ($50,000 for loss of amenities, pain and suffering, $5,000 for future loss of earnings) were assessed by Chua J. in the year 1965.

Among the other cases referred to by plaintiff's counsel was the case of *Liow Sang* v. *Chai Choo Kim & Anor.*[4] In that case, the plaintiff, in addition to a crushed right leg below the knee with the foot missing, had a fracture of the shaft of the right femur and multiple fractures of the pelvis with rupture of the urethra which had to be dilated now and again to enable the plaintiff to pass urine. As a result he also suffered impotency, and was unable to have intercourse with his wife because he was unable to have an erection. In all the circumstances of that case, Gill J. (as he then was) assessed damages at $37,000 in the year 1962.

Having considered all the cases referred to by both counsel and taking into account the injuries and the resultant disability referred to above, I therefore assessed general damages in this case for loss of amenities, pain and suffering at $32,000. The defendant was also ordered to pay the usual interest on both special and general damages as well as the plaintiff's costs as taxed.

Order accordingly.

Solicitors: *V. Muthusamy & Co.; R.K. Nathan & Co.*